

PATENTS  
Attorney Docket No. NSO-001.01

#9

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
Lam et al.	)	
Application No:	)	Art Unit: 2641
09/758,034	)	
Filed:	)	Confirmation No.: 8283
January 9, 2001	)	
For:	)	Examiner: Not yet assigned
SYSTEM AND METHOD FOR	)	
UTTERANCE VERIFICATION OF	)	
CHINESE LONG AND SHORT	)	
KEYWORDS	)	

**CERTIFICATE OF MAILING**

I hereby certify that the following paper is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 8, 2004.

Brett Clemens

**RECEIVED**

NOV 15 2004

**OFFICE OF PETITIONS**

Mail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)**

In accordance with 37 C.F.R. § 1.136(a), please grant any extension of time that this paper requires but no accompanying paper requests. Also, please charge any additional fee occasioned by this paper, or credit any overpayment, to our Deposit Account No. 06-1448, Reference NSO-001.01.

This is in response to the Office's May 7, 2004 dismissal of the Applicants' April 23, 2004, Petition for Revival of an Application for Patent Abandoned Unintentionally under 37

C.F.R. § 1.137(b) and Petition under 37 C.F.R. § 1.47(a). A copy of the dismissal is provided herewith for the Office's reference. The Office indicated that the reason for the dismissal was that the Petition under 37 C.F.R. § 1.47(a) did not have adequate proof that the application papers were sent or presented to the non-signing inventor.

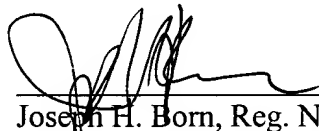
In accordance with 37 C.F.R. § 1.137(e) and the Office's instructions provided in the dismissal, Applicants submit the revised Petition Under 37 C.F.R. § 1.47(a), provided herewith, to correct the deficiencies indicated in the dismissal. Applicants note that two additional attempts to contact the non-signing inventor Fung were made, one by DHL express mail service and one through e-mail, but that the inventor Fung has remained unresponsive.

Additionally, in accordance with 37 C.F.R. § 1.63(c) and the Office's instructions, Applicants' also submit a copy of the declaration signed by the inventor Lam, as well as an Application Data Sheet providing the inventor Lam's home address.

Applicants consider the renewed petition to be complete and therefore respectfully request reconsideration of the April 23, 2004, Petition Under 37 C.F.R. § 1.137(b).

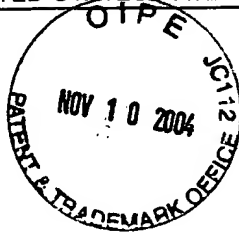
Respectfully submitted,

Date: November 8, 2004  
**Customer No: 25181**  
Patent Group  
Foley Hoag, LLP  
155 Seaport Blvd.  
Boston, MA 02210-2600

  
\_\_\_\_\_  
Joseph H. Born, Reg. No. 28,283  
Attorney for Applicants  
Tel. No. (617) 832-1134  
Fax. No. (617) 832-7000



## UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Paper No.

*km*

CHIAHUA GEORGE YU  
C. GEORGE YU, ATTORNEY  
STE. 210  
1250 OAKMEAD PKWY  
SUNNYVALE, CA 94085

COPY MAILED

MAY 07 2004

OFFICE OF PETITIONS

*Reconsideration*  
*Request: 7.7.04*  
DUE: \_\_\_\_\_  
FINAL: *12.7.04*

In re Application of  
Kwok Leung Lam, et al.  
Application No. 09/758,034  
Filed: January 9, 2001  
Attorney Docket No. WIW-001.01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 23, 2004, to revive the above-identified application.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts (Notice) mailed April 5, 2001. The notice required the statutory basic filing fee, an oath or declaration under 37 CFR 1.63 and the requisite surcharge. Since no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the application became abandoned on June 6, 2001. A Notice of Abandonment was mailed on July 7, 2003. In response, on April 23, 2004, petitioner filed the present petition, the requisite filing fee and surcharge, a partially executed declaration and a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.137(b) is **DISMISSED**.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above in view of the deficiencies found in the partially signed declaration and the petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) and (2) as set forth above.

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MAY 11 2004

PATENT DEPT.  
DOCKETING

As to item (1), applicant appears to demonstrate that Mr. Fung was only presented with a declaration and assignment papers. Unless Mr. Fung was presented with a copy of the application papers (specification, claims and drawings), Mr. Fung could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. In order to show that the inventor has refused to join in the application, petitioner must provide adequate proof that the application papers were sent or presented to the inventor, but that the inventor did not respond to the request that he sign the oath/declaration. Did the inventor receive the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). The present petition fails to show that the inventor has refused to sign the declaration.

Further, Rule 47 applicant has failed to show that the inventor cannot be reached. While it appears a copy of the declaration and assignment papers were sent to the last known address of the non-signing inventor on June 20, 2003 and January 6, 2004, were the papers ever returned? What other efforts to locate the missing inventor were explored, e.g. contact through e-mail or telephone? The present petition fails to show that the inventor cannot be located.

As to item (2) the declaration of Mr. Lam does not set forth either his or Mr. Fung's residence and post office address. Accordingly, an oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by Mr. Lam on behalf of himself and Mr. Fung is required. See MPEP 409.03(a).]

The above-identified application cannot be revived until a declaration under 37 CFR 1.63 is filed in response to the Notice of Missing Parts mailed April 5, 2001 or a grantable petition in compliance with 37 CFR 1.47(a) is submitted.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. No further petition fee is required. However, the reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)", as well as the missing items noted above. Petitioner is advised that this is not a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

**By Mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**By Hand:** 2011 South Clark Place  
Crystal Plaza Two, Lobby  
Room 1B03  
Arlington, VA 22202

The centralized facsimile number is (703) 872-9306.

The Power of Attorney filed April 23, 2004 is not accepted since the Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73(b) has not been received. However, in accordance with 37 CFR 1.34(a), the signature of Kevin Oliver appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. The correspondence address will not be changed. A courtesy copy of this decision is being mailed to petitioner. If Mr. Oliver desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.



Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Kevin A. Oliver  
Foley Hoag, LLP  
155 Seaport Boulevard  
Boston, MA 02210-2600



### POWER OF ATTORNEY

We hereby appoint practitioners at customer number 25181 as our attorney or agent to prosecute the patent applications identified below, and to transact all business in the U.S. Patent and Trademark Office connected therewith:

60/206,092; 60/175,368; 09/758,030; 09/758,034; 60/298,686; 60/264,660; 09/111,630;  
09/614,050; 09/613,472; 09/613,849; 09/614,465; 09/737,840; 10/060,031; 60/175,464;  
09/858,334; 60/204,204; 60/212,484; 60/212,486; 60/212,304.

Please change the correspondence address for the above-identified applications to the above-mentioned customer number.

We are the Assignees of record of the entire interest, said Assignment submitted to the U.S. PTO under separate cover.

Printed Name: TAN CHONG KWAN  
of NuSuara Technologies SDN BHD

Signed Name: Tan Chong Kwan

Title: Director



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NOV 15 2004

OFFICE OF PETITIONS

**DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION  
USING AN APPLICATION DATA SHEET (37 CFR 1.76)**

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or
- ☒ Application No. 09/758,034, filed on January 9, 2001,
- ☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/ we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable; and

All statements made herein of my/own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

**FULL NAME OF INVENTOR(S)**

Inventor one: Kwok Leung Lam

Signature: 

Citizen of: Hong Kong

Inventor two: Pascale Fung

Signature: \_\_\_\_\_

Citizen of: Hong Kong

Inventor three: \_\_\_\_\_

Signature: \_\_\_\_\_

Citizen of: \_\_\_\_\_

Inventor four: \_\_\_\_\_

Signature: \_\_\_\_\_

Citizen of: \_\_\_\_\_

☐ Additional inventors are being named on \_\_\_\_\_ additional form(s) attached hereto.

Burden Hour Statement: This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is used by the public to file (and the PTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 1 minute to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

## **Application Data Sheet**

### **Application Information**

Application Number:: 09/758,034

Filing Date:: January 9, 2001

Application Type:: Regular

Subject Matter:: Utility

Suggested Classification::

Suggested Group Art Unit:: 2641

CD-ROM or CD-R?::

Number of CD disks::

Number of copies of CDs::

Sequence submission?::

Title:: System and Method for Utterance Verification of Chinese Long and Short

Keywords

Attorney Docket Number:: NSO-001.01

Request for Early Publication?::

Request for Non-Publication?::

Suggested Drawing Figure:: Figure 1A

Total Drawing Sheets:: Two (2)

Small Entity:: Small Entity

Licensed US Govt. Agency::

Contract or Grant Numbers::

Secrecy Order in Parent Appl.::

### **Applicant Information**

Applicant Authority type:: Inventor

Primary Citizenship Country:: US

Status:: Full Capacity

Given Name:: Kwok Leung

Family Name:: Lam

Name Suffix::



City of Residence:: Kwai Chung  
State or Province of Residence:: N.T.  
Country of Residence:: Hong Kong  
Street of mailing address:: Room 205, Block 4, Lai King Estate  
State or Province of mailing address:: N.T.  
Country of mailing address:: Hong Kong  
Postal or Zip Code of mailing address::

### **Applicant Information**

Applicant Authority type:: Inventor  
Primary Citizenship Country:: US  
Status:: Full Capacity  
Given Name:: Pascale  
Family Name:: Fung  
Name Suffix::  
City of Residence:: Clear Water Bay  
State or Province of Residence:: Kowloon  
Country of Residence:: Hong Kong  
Street of mailing address:: Dept. of Electrical and Electronic Engineering  
University of Science and Technology  
State or Province of mailing address:: Kowloon  
Country of mailing address:: Hong Kong  
Postal or Zip Code of mailing address::

### **Correspondence Information**

Correspondence Customer Number:: 25181

### **Representative Information**

Representative Customer Number::	25181
----------------------------------	-------

**Domestic Priority Information**

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
09/758,034	Claiming Benefit Under 35 USC 119(e)	60/175,464	January 10, 2000

**Foreign Priority Information**

Country::	Application Number::	Filing Date::	Priority Claimed::

**Assignee Information**

Assignee Name:: NuSuara Technologies SDN BHD  
Street of mailing address:: 3B-3A-7, Tower 3B, Plaza Sentral  
City of mailing address:: KL Sentral,  
State or Province of mailing address:: 50470 Kuala Lumpur  
Country of mailing address:: Malaysia  
Postal or Zip Code of mailing address::



#10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Lam et al. )  
Application No: 09/758,034 ) Art Unit: 2641  
Filed: January 9, 2001 ) Confirmation No.: 8283  
For: SYSTEM AND METHOD FOR ) Examiner: Not yet assigned  
UTTERANCE VERIFICATION OF )  
CHINESE LONG AND SHORT )  
KEYWORDS )

**CERTIFICATE OF MAILING**

I hereby certify that the following paper is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 8, 2004.

Brett Clemens

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.47(a)**

Dear Sir:

Applicants submit this Petition under 37 C.F.R. § 1.47(a) in reply to the Notice to File Missing Parts dated April 5, 2001 and the Office's May 7, 2004 dismissal of the Applicants' April 23, 2004, Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. § 1.137(b) and Petition Under 37 C.F.R. § 1.47(a). The Office indicated that the reason for the dismissal was that the Petition under 37 C.F.R. § 1.47(a) did not have adequate proof that the application papers were sent or presented to the non-signing inventor.

In accordance with 37 C.F.R. § 1.47(a) and MPEP § 409.03(a) and (d), Applicants state the following:

FHBOSTON/1105075.1

1. At the time the inventions of the present application were invented, inventor Fung was employed by Weniwen.com, Inc.

2. Applicants' attorney obtained the last known address of inventor Fung from NuSuara Technologies Sdn. Bhd. (NuSuara), which entity is the successor-in-interest to Weniwen.com, Inc.

3. Applicants' attorney sought to contact inventor Fung on June 20, 2003. On that date, Applicants' Attorney deposited with DHL Worldwide Express a package addressed to the last known address of inventor Fung. This package included a letter to inventor Fung and a declaration and an assignment for execution by inventor Fung. A copy of the June 20, 2003 letter to inventor Fung is attached as Exhibit A.

4. Applicants' attorney received no response from inventor Fung in reply to the June 20, 2003, letter.

5. Applicants' attorney sought to contact inventor Fung on January 6, 2004. On that date, Applicants' attorney deposited with DHL Worldwide Express another package addressed to the last known address of inventor Fung. This package also included a letter to inventor Fung and a declaration and an assignment for execution by inventor Fung. A copy of the January 6, 2004, letter to inventor Fung is attached as Exhibit B, and a copy of the DHL Shipment Air Waybill is attached as Exhibit C.

6. Applicants' attorney received no response from inventor Fung to the January 6, 2004, letter.

7. Applicants' attorney sought to contact inventor Fung on May 27, 2004. On that date, Applicants' attorney deposited with DHL Worldwide Express another package addressed to the last known address of inventor Fung. This package included a letter to inventor Fung, a declaration and an assignment for execution by inventor Fung, and a copy of the above-identified application. A copy of the May 27, 2004, letter to inventor Fung is attached as Exhibit D, and a copy of the DHL Shipment Air Waybill is attached as Exhibit E. A copy of an e-mail from DHL's Customer Service Department, confirming that the package was delivered and signed for in Hong Kong on May 31, 2004, is attached as Exhibit F.

8. Applicants' attorney received no response from inventor Fung to the May 27, 2004, letter.

9. Applicants' attorney sought to contact inventor Fung on October 4, 2004. On that date, Applicants' attorney sent an e-mail communication to an e-mail address, belonging to the inventor Fung, at the University of Science and Technology in Hong Kong, where the inventor Fung works as an Assistant Professor. A copy of the website listing the active e-mail address of the inventor Fung is attached as Exhibit G.

10. The e-mail communication to inventor Fung included, as electronic attachments, a declaration and an assignment for execution by inventor Fung, and a copy of the above-identified application. A copy of the October 4, 2004, e-mail communication to inventor Fung is attached as Exhibit H.

11. Applicants' attorney did not receive any response from inventor Fung to the October 4, 2004 e-mail communication.

In accordance with 37 C.F.R. § 1.47(a) and MPEP § 409.03(a) and (e), Applicants state that the last known address of inventor Pascale Fung is:

Department of Electrical and Electronic Engineering,  
University of Science and Technology,  
Clear Water Bay, Kowloon  
Hong Kong.

In view of the foregoing statements and the accompanying documents, Applicants request that the Commissioner grant this Petition under 37 C.F.R. § 1.47(a).

Applicants' attorney considers this Petition to be complete. Should additional fees be required for consideration of the Petition, Applicants' attorney requests that the additional fees be charged to **Deposit Account No. 06-1448, Reference NSO-001.01**. Further, Applicants'

attorney hereby authorizes the Commissioner to credit any overpayment to **Deposit Account Number 06-1448, Reference NSO-001.01.**

Respectfully submitted,

Date: November 8, 2004

***Customer No: 25181***

Patent Group

Foley Hoag, LLP

155 Seaport Blvd.

Boston, MA 02210-2600



Joseph H. Born, Reg. No. 28,283

Attorney for Applicants

Tel. No. (617) 832-1134

Fax. No. (617) 832-7000

## **Exhibit A**



**FOLEY  
HOAG LLP**  
ATTORNEYS AT LAW

June 20, 2003

Kevin Oliver  
Boston Office  
617.832.1241  
koliver@foleyhoag.com

**Via DHL**

Pascale Fung  
Department of Electrical and Electronic Engineering  
University of Science and Technology  
Clear Water Bay, Kowloon  
Hong Kong

Re U.S. Patent Application Serial No. 09/758,034; 09/758,030; 09/858,334  
"System and Method for Utterance Verification of Chinese Long and  
Short Keywords"; "System and Method for Speech Processing with  
Limited Training Data"; and "System and Methods for Accent  
Classification and Adaptation"  
Filed: January 9, 2001; January 9, 2001 and May 15, 2001  
Our Ref. Nos.: NSO-001.01 (24793-101); NSO-002.01 (24793-201);  
NSO-009.01 -24793-901)

Dear Mr. Fung:

We represent NuSuara Technologies Sdn. Bhd.

As you may know, NuSuara Technologies recently acquired the above-identified United States patent applications that were previously owned by your former employer, Weniwen, Inc. As you likely know, you are a named inventor on these applications, and should a patent issue, your name will appear as an inventor on the issued patent.

Accordingly to U.S. law, for the subject applications to proceed, two documents must be filed with the U.S. Patent Office. First, each inventor must sign a declaration in which the inventor declares not only his/her status as an inventor, but also recognizes the other named inventors. Second, the inventors must execute assignments in which the patent rights are assigned to the employer at the time the invention was invented, which in this instance, is Weniwen, Inc. Although this may appear to be somewhat strange due to the current status of Weniwen, Inc., please know that we must connect a chain of title between yourself as the inventor, and NuSuara Technologies. That chain of title begins

20/552784.1



Pascale Fung  
June 20, 2003  
Page 2

with your employment agreement and your obligation to assign your inventions to Weniwen, Inc.

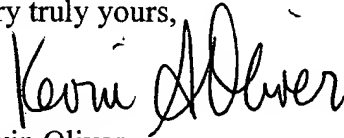
In accordance with the above, we enclose for your execution (1) Declarations of Inventorship, and, (2) Assignments to Weniwen, Inc. Please sign and date these documents where indicated by the "Sign Here" stickers.

Please also confirm that the listed country of citizenship is correct on the Declaration.

We also enclose for your convenience a return pre-paid DHL envelope. Please place the executed declarations and assignments in the return pre-paid envelope and send the same to us at your earliest convenience by providing the DHL envelope to a DHL office.

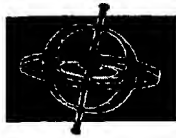
We appreciate your prompt attention to this issue. Should you have questions, please do not hesitate to contact me at (617) 832-1241, or by email at [koliver@foleyhoag.com](mailto:koliver@foleyhoag.com).

Very truly yours,

  
Kevin Oliver

KAO  
Enclosures

## **Exhibit B**



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

January 6, 2004

Kevin Oliver  
Boston Office  
617.832.1241  
koliver@foleyhoag.com

**Via DHL**

Pascale Fung  
Department of Electrical and Electronic Engineering  
University of Science and Technology  
Clear Water Bay, Kowloon  
Hong Kong

Re U.S. Patent Application Serial No. 09/758,034; 09/758,030; 09/858,334  
"System and Method for Utterance Verification of Chinese Long and  
Short Keywords"; "System and Method for Speech Processing with  
Limited Training Data"; and "System and Methods for Accent  
Classification and Adaptation"  
Filed: January 9, 2001; January 9, 2001 and May 15, 2001  
Our Ref. Nos.: NSO-001.01 (24793-101); NSO-002.01 (24793-201);  
NSO-009.01 -24793-901)

Dear Mr. Fung:

We represent NuSuara Technologies Sdn. Bhd.

As you may know, NuSuara Technologies recently acquired the above-identified United States patent applications that were previously owned by your former employer, Weniwen, Inc. As you likely know, you are a named inventor on these applications, and should a patent issue, your name will appear as an inventor on the issued patent.

According~~ing~~ to U.S. law, for the subject applications to proceed, two documents must be filed with the U.S. Patent Office. First, each inventor must sign a declaration in which the inventor declares not only his/her status as an inventor, but also recognizes the other named inventors. Second, the inventors must execute assignments in which the patent rights are assigned to the employer at the time the invention was invented, which in this instance, is Weniwen, Inc. Although this may appear to be somewhat strange due to the current status of Weniwen, Inc., please know that we must connect a chain of title between yourself as the inventor, and NuSuara Technologies. That chain of title begins

20/574271.1

Pascale Fung  
January 6, 2004  
Page 2

with your employment agreement and your obligation to assign your inventions to Weniwen, Inc.

In accordance with the above, we enclose for your execution (1) Declarations of Inventorship, and, (2) Assignments to Weniwen, Inc. Please sign and date these documents where indicated by the "Sign Here" stickers.

Please also confirm that the listed country of citizenship is correct on the Declaration.

We also enclose for your convenience a return pre-paid DHL envelope. Please place the executed declarations and assignments in the return pre-paid envelope and send the same to us at your earliest convenience by providing the DHL envelope to a DHL office.

We appreciate your prompt attention to this issue. Should you have questions, please do not hesitate to contact me at (617) 832-1241, or by email at [koliver@foleyhoag.com](mailto:koliver@foleyhoag.com).

Very truly yours,



Kevin Oliver

KAO/jyc  
Enclosures

## **Exhibit C**

REORDER 753335514-50

QTY 300

Process and Track your shipment online: <http://www.dhl-usa.com>

PPF PPF



1-800-CALL-DHL in USA only

SHIPMENT APPROVAL

867 3221 546

805

1/31/03

6

Complete sections 1-8. You are making 4 copies, please press hard.

1 Payer account number and shipment value protection details

Charge to ☒ Shipper ☐ Receiver ☐ 3rd Party

Payer Account No.

Shipment Value Protection (see reverse)

☐ Yes Declared Value for Carriage (in US \$) ☐ No

2 From (Shipper)

Shipper's Account Number

753335514

Shipper's Reference (up to 35 characters)

24793-201

Company Name

FOLLEY HOAG LLP

Address

11TH FLOOR

155 SEAPORT BLVD

BOSTON MA

Post/ZIP Code (required)

022102698

Phone, Fax, or E-mail (required)

(617)832-1000

Contact Name

Kevin Oliver

Company Name

University of Science & Technology

Contact Name

Pascal Fung

Delivery Address DHL cannot deliver to a PO Box

Clear Water Bay, Kowloon

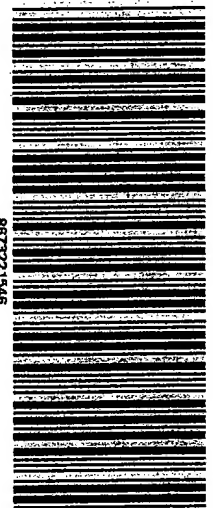
Hong Kong

Dept. of Electrical and Electronic Engineering

Post/ZIP Code (required)

Hong Kong

Phone, Fax, or E-mail (required)



8673221546

4 Shipment Details

Total Number of Packages

1

Total Weight

X2

lbs

Dimensions (in inches)

Pieces

Length

Width

Height

X

X

X

X

X

X

X

X

X

X

X

X

X

X

X

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X

X

X

X

X

X

X

X

X

5 Full Description of Contents

Give Content and Quantity DHL Does Not Transport Cash

Legal documents

6 Dutiable Shipments Only (Customs requirement)

Attach the original and four copies of a Commercial Invoice or Pro Forma Export License No./Symbol (if applicable) Receiver's VAT/GST or Shipper's EIN/SSN

Value for Customs (in US \$)

Schedule B Number / Harmonized Code (if applicable)

(as on Commercial/Pro Forma Invoice)

TYPE OF EXPORT

Permanent

Repair/Return

Temporary

Destination Duties/Taxes if left blank, Receiver pays duties/taxes.

Receiver

Shipper

Other

Specify appropriate box number

The commodities, technology or software to be exported from the U.S. are in compliance with the U.S. Bureau of Export Administration, Division of Export Controls, License No. 100-100-100-100

7 Shipper's Authorization (signature required)

I/we agree that DHL's standard terms apply to this shipment and limit DHL's liability for loss or damage to US \$100. The Warsaw Convention may also apply (see reverse). I/we authorize DHL to use the services of its subcontractors and agents and to accept the terms and conditions of the applicable tariff. I/we agree to pay all charges if the recipient or 3rd party refuses to pay. I/we understand that DHL DOES NOT TRANSPORT CASH.

Signature (required)

Kevin Oliver

Date

1/6/04

8 Products & Services

DOMESTIC EXPRESS

GLOBAL MAIL

Priority

Standard

IP

ISL

Dom/Pass

Worldwide Express

Non-Dutiable

Worldweight

Dutiable

Other

Service Options (see charges page apply)

Delivery

Signature

Hold For Pickup

Delivery Modification

Other

Not all products or services options are available in all countries

Dimensions/Weight

Length

Width

Height

Weight

Drop Box

Transport Collection/Returns

Payment Details (Check Card)

Invoice

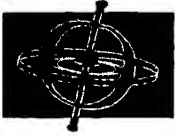
Signature

Phone No.

Time

Date

## **Exhibit D**



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

May 27, 2004

Kevin Oliver  
Boston Office  
617.832.1241  
koliver@foleyhoag.com

**Via DHL**

Pascale Fung  
Department of Electrical and Electronic Engineering  
University of Science and Technology  
Clear Water Bay, Kowloon  
Hong Kong

Re U.S. Patent Application Serial No. 09/758,034  
Filed: January 9, 2001  
Title: System and Method for Utterance Verification of Chinese Long  
and Short Keywords  
Our Ref. Nos.: NSO-001.01 (24793-101)

Dear Mr. Fung:

We represent NuSuara Technologies Sdn. Bhd.

As you may know, NuSuara Technologies recently acquired the above-identified United States patent applications that were previously owned by your former employer, Weniwen, Inc. As you likely know, you are a named inventor on these applications, and should a patent issue, your name will appear as an inventor on the issued patent.

According to U.S. law, for the subject applications to proceed, two documents must be filed with the U.S. Patent Office. First, each inventor must sign a declaration in which the inventor declares not only his/her status as an inventor, but also recognizes the other named inventors. Second, the inventors must execute assignments in which the patent rights are assigned to the employer at the time the invention was invented, which in this instance, is Weniwen, Inc. Although this may appear to be somewhat strange due to the current status of Weniwen, Inc., please know that we must connect a chain of title between yourself as the inventor, and NuSuara Technologies. That chain of title begins with your employment agreement and your obligation to assign your inventions to Weniwen, Inc.

FHBoston/1060901.1



Pascale Fung  
May 27, 2004  
Page 2

In accordance with the above, we enclose for your execution (1) Declarations of Inventorship, and, (2) Assignments to Weniwen, Inc. Please sign and date these documents where indicated by the "Sign Here" stickers.

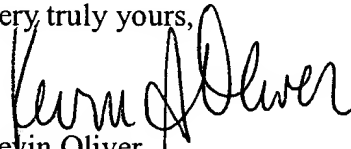
Please also confirm that the listed country of citizenship is correct on the Declaration.

We also enclose a copy of the application as filed with the United States Patent and Trademark Office on January 9, 2001 in the event that it was not previously forwarded to you.

We further enclose for your convenience a return pre-paid DHL envelope. Please place the executed declarations and assignments in the return pre-paid envelope and send the same to us at your earliest convenience by providing the DHL envelope to a DHL office.

We appreciate your prompt attention to this issue. Should you have questions, please do not hesitate to contact me at (617) 832-1241, or by email at [koliver@foleyhoag.com](mailto:koliver@foleyhoag.com).

Very truly yours,



Kevin Oliver

KAO/jyc  
Enclosures

## **Exhibit E**

REORDER 75335514-50 QTY 300

PPF PPF

1/31/03 6

**DHL** Process and Track your shipment online: <http://www.dhl-usa.com>

867 3221 476

805

DESTINATION CODE

**1 Payer account number and shipment value protection details**

Change to ☒ Shipper ☐ Receiver ☐ 3rd Party

Payer Account No. \_\_\_\_\_

Shipment Value Protection (see reverse) ☐ Cash ☐ Check ☐ Credit Card

☐ Yes Declared Value for Carriage (in US \$) \_\_\_\_\_ Not all payment options are available in all countries.

**2 From (Shipper)**

Shipper's Account Number **75335514** Contact Name **Kevin Oliver**

Shipper's Reference (up to 35 characters) **24793-101**

Company Name

**FOLEY HOAG LLP**

Address

**11TH FLR  
155 SEAPORT BLVD  
BOSTON MA**

Post/Zip Code (required) **022102698** Phone, Fax, or E-mail (required) **(617)832-1000**

**3 To (Receiver)**

Company Name

**University of Science & Technology**

Contact Name

**Pascal Fung**

Delivery Address **DHL Cannot Deliver to a PO Box**

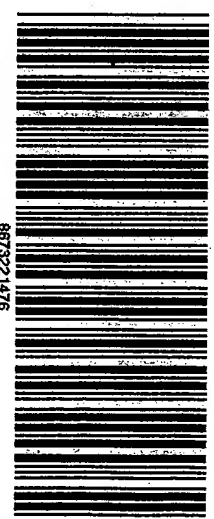
**Clear Water Bay, Kowloon  
Hong Kong**

**Attn: Dept. of Electrical & Electronic Engineering**

Post/Zip Code (required)

Country **Hong Kong**

Phone, Fax, or E-mail (required)



8673221476

**4 Shipment Details**

Total Number of Packages	Total Weight (if DHL Express Document packaging used, enter XD)	Pieces	Length	Width	Height
1	1 lbs	1	11	11	11

**5 Full Description of Contents**

Give Content and Quantity **DHL Does Not Transport Cash**

*Legal documents*

**6 Dutiable Shipments Only (Customs requirement)**

Attach the original and four copies of a Commercial Invoice or Pro Forma Export License No./Symbol (if applicable) Receiver's VAT/GST or Shipper's EIN/ISSN

Value for Customs (in US \$) \_\_\_\_\_ Schedule B Number / Harmonized Code (if applicable) \_\_\_\_\_ (as on Commercial/Pro Forma Invoice)

**TYPE OF EXPORT** ☐ Permanent ☐ Repair/Return ☐ Temporary

Destination Duties/Taxes if left blank, Receiver pays duties/taxes.

☐ Receiver ☐ Shipper ☐ Other \_\_\_\_\_

The commodities, technology or software to be exported from the U.S. are in compliance with the U.S. Bureau of Export Administration. Diversion to countries contrary to U.S. law prohibited.

**7 Shipper's Authorization (signature required)**

I/we agree that DHL's standard terms apply to this shipment and limit DHL's liability for loss or damage to U.S. \$100. The Warsaw Convention may also apply (see reverse). I/we authorize DHL to complete other documents necessary to export this shipment. I/we understand that Shipment Value Protection is available on request, for an extra charge. I/we agree to pay all charges if the recipient or 3rd party refuses to pay. I/we understand that DHL DOES NOT TRANSPORT CASH.

Signature (required) **Kevin Oliver** Date **5/27/04**

**8 Products & Services**

☐ DOMESTIC EXPRESS ☐ GLOBAL MAIL ☐ Priority ☐ Standard ☐ P/A ☐ ISAL ☐ Definitas

☒ WORLDWIDE EXPRESS ☐ Int'l Express Envelope ☐ Non-Dutiable ☐ Work/Freight

☐ Datable ☐ Other \_\_\_\_\_

Service Options (extra charges may apply) ☐ Saturday ☐ Pickup ☐ Delivery Notification

☐ Hold For Pickup ☐ Delivery Notification ☐ Other \_\_\_\_\_

Not all products or services options are available in all countries.

**DIMENSIONAL/CHARGEABLE WEIGHT**

Services ☐ Charges

Drop Box ☐ Total

TRANSPORT COLLECT STICKERS

PAID DETAILS (check circle)

NO ☐ YES ☐ Expire

Auth. \_\_\_\_\_

PICKED UP BY \_\_\_\_\_

Route No. \_\_\_\_\_

Time \_\_\_\_\_

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Time \_\_\_\_\_

## **Exhibit F**

**Rabinovitch, Ido**

---

**From:** css [css@hk.dhl.com]  
**Sent:** Monday, September 13, 2004 12:52 PM  
**To:** Galante, Therese  
**Cc:** hkgwebcust@dhl.com; Rabinovitch, Ido  
**Subject:** Re: Shipment Tracking

Dear Mr/Madam Therese Galante

Thank you for contacting DHL via the WWW.

Regarding your enquiry the shipment #8673221476 was delivered in Hong Kong on 31 May 2004 10:22 signed for by Stamp.

In the meantime, please feel free to contact our 24-hour Customer Service Hotline at (852)-24003388

if our services are needed.

Yours sincerely,

Olivia Chan

Customer Service Department

"Galante, Therese" wrote:

We are trying to see when a package was delivered the air bill number is 867 3221 476. I have called the DHL 1-800-number and they were only able to pull up records beginning in June. We have checked our invoices since this is a corporate account and we were billed for this shipment on the DHL invoice # 0015972118 dated 06/05/04 for \$31.85 for this shipment. It shows that it was sent to the University of Science and Tech in Kowloon, Hong Kong, and that it was shipped on 05/27/04 which agrees with our records.

Does DHL keep tracking history or copies of the signed receipt in their system.

Thank you  
Therese Galante  
Patent Administrator  
Foley Hoag, LLP  
155 Seaport Blvd.  
Boston, MA 02210

10/6/2004

## **Exhibit G**

# DEPARTMENT OF ELECTRICAL & ELECTRONIC ENGINEERING



ABOUT EEE	ADMISSIONS	UNDERGRADUATE STUDY	POSTGRADUATE STUDY	PEOPLE	HOME
RESEARCH	FACILITIES	INDUSTRY & ENTREPRENEURS			INTRANET
		<a href="#">MSC - IC DESIGN ENG</a> <a href="#">MSC - TELECOMMUNICATIONS</a> <a href="#">MSC - EEE</a> <a href="#">MPhil - EEE</a> <a href="#">PhD - EEE</a> <a href="#">COURSES</a>			

## PEOPLE

Faculty  
View by Position  
View by Alphabetical Order  
View by Research Areas

Staff

Postgraduate Students

## Pascale FUNG

**Assistant Professor**  
 Dept of Electrical & Electronic Engineering  
 HKUST

*BS Worcester Polytech Inst  
 MS, PhD (1997), Columbia*

Room: 2529  
 Tel: +852 2358 8537  
[pascalle@ee.ust.hk](mailto:pascalle@ee.ust.hk)  
 Publications  
 Personal Home Page



## Research Interests

Speech recognition and understanding; machine translation; and multilingual language processing and information extraction.

Professor Fung received her PhD in Computer Science from Columbia University in 1997. She received her MSc in Computer Science from Columbia in 1993 and her BS in Electrical Engineering from Worcester Polytechnic Institute in Massachusetts in 1988.

She is one of the founding faculty members of the Human Language Technology Center (HLTC) at HKUST. Professor Fung was a research affiliate with AT&T Research Laboratories (formerly with Bell Laboratories) (Fortham Park, New Jersey, Murray Hill, New Jersey) from 1993-1997. During 1991-1992, she was Associate Scientist at BBN Systems & Technologies (Cambridge, Mass.). She was a visiting researcher at LIMSI, Centre National de la Recherche Scientifique (France) in 1991. From 1989-1991, she was a research student in the Department of Information Science, Kyoto University (Japan).

Professor Fung is the co-editor of the Special Issue on Learning in Speech and Language Technologies of the Machine Learning Journal. She has been on the organizing committee of the Association of Computational Linguistics (ACL) SIGDAT, and served as chair for the Conference on Empirical Methods in Natural Language Processing (EMNLP) in 1999, and co-chair of Semanet 2002. She has served as program committee member of numerous international conferences and technical publications, including the conferences of the ACL, EMNLP, Workshop on Very Large Corpora, American Machine Translation

Association, COLING, Computational Linguistics (journal), Machine Learning (journal), Machine Translation (journal), and has served as a reviewer for HK Research Grants Council. She is a Senior Member of the Institute of Electrical and Electronic Engineers and a Member of the ACL.

#### Recent Publications

- Yi Liu and Pascale Fung, State-Dependent Phonetic Tied Mixtures with Pronunciation Modeling for Spontaneous Speech Recognition, IEEE Trans. on Speech and Audio Processing, Apr. 2004.
- Chi-Shun Cheung and Pascale Fung, Unsupervised Learning of a Spontaneous and Colloquial Speech Lexicon in Chinese, International J. of Speech Technologies, Apr. 2004.
- Yi Liu and Pascale Fung, Modeling Partial Pronunciation Variations for Spontaneous Mandarin Speech Recognition, Computer Speech & Language, Vol. 17, No. 4, pp. 357379, Oct. 2003.
- Pascale Fung, Xiaohu Liu, and Chi-Shun Cheung, Mixed-Language Query Disambiguation, Proc. ACL 1999, Maryland, Jun. 1999.



## **Exhibit H**

## Rabinovitch, Ido

---

**From:** Rabinovitch, Ido  
**Sent:** Monday, October 04, 2004 2:19 PM  
**To:** 'pascale@ee.ust.hk'  
**Subject:** U.S. Application No. 09/758,034, entitled "System and Method for Utterance Verification of Chinese Long and Short Keywords"

Dear Ms. Fung,

This is further to our May 27, 2004 letter to you regarding the above-noted application, which followed our two previous letters to you regarding the above-noted application.

We represent NuSuara Technologies Sdn. Bhd.

As you may know, NuSuara Technologies recently acquired the above-identified United States patent applications that were previously owned by your former employer, Weniwen, Inc. As you likely know, you are a named inventor on these applications, and should a patent issue, your name will appear as an inventor on the issued patent.

According to U.S. law, for the subject applications to proceed, two documents must be filed with the U.S. Patent Office. First, each inventor must sign a declaration in which the inventor declares not only his/her status as an inventor, but also recognizes the other named inventors. Second, the inventors must execute assignments in which the patent rights are assigned to the employer at the time the invention was invented, which in this instance, is Weniwen, Inc. Although this may appear to be somewhat strange due to the current status of Weniwen, Inc., please know that we must connect a chain of title between yourself as the inventor, and NuSuara Technologies. That chain of title begins with your employment agreement and your obligation to assign your inventions to Weniwen, Inc.

In accordance with the above, we attach for your execution (1) a copy (in Word and in PDF formats) of the Declarations of Inventorship, and, (2) a copy (also in Word and PDF formats) of the Assignment to Weniwen, Inc. If you require that the documents be sent in a different format, please let me know. Please sign and date these documents. After signing the documents, please fax the Declaration and Assignment to us at (617) 832-7000. Please also send the original copies of the executed Declaration and Assignment to the following address.

Ido Rabinovitch  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston, Massachusetts 02210  
U.S.A.

**RECEIVED**  
NOV 15 2004  
OFFICE OF PETITIONS

We will be happy to reimburse you for any expense that you may incur in forwarding the two documents to us.

Please also confirm that the listed country of citizenship is correct on the Declaration, and provide us with your residence and post office addresses.

We also attach a PDF copy of the application as filed with the United States Patent and Trademark Office on January 9, 2001.

We appreciate your prompt attention to this issue. Should you have questions, please do not hesitate to contact me at (617) 832-3072, or by email at [irabinovitch@foleyhoag.com](mailto:irabinovitch@foleyhoag.com).

Very truly yours,

Ido Rabinovitch



NSO-001.01



NSO-001.01



NSO-001.01



FHE20-#551404-v1 FHE20-#552918-v1

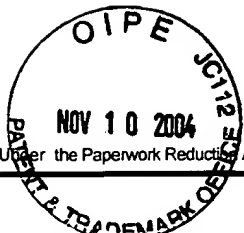


Declaration - 11143..Application - 11143..ssignment - 111434.-NSO-001\_01\_D... -NSO-001\_01\_-...

Ido Rabinovitch  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210-2600  
Phone: 617.832.3072  
Fax: 617.832.7000  
irabinovitch@foleyhoag.com

\*\*\*\*\*

This e-mail communication and any attachments are confidential and intended only for the use of the designated recipients named above. This communication may be an attorney-client communication and as such is privileged and confidential. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please notify Foley Hoag LLP immediately by telephone at (617)832-1000 and destroy all copies of this communication and any attachments.



#12

### STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: NuSuara Technologies SDN. BHD

Application No./Patent No.: 09/758,034

Filed/Issue Date: January 9, 2001

Entitled: System and Method for Utterance Verification of Chinese Long and Short Keywords

NuSuara Technologies, SDN BHD

a Corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title, and interest

The extent (by percentage) of its ownership interest is \_\_\_\_\_ %

in the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above, the assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Lam, Kwok Leung

To: Weniwen.com, Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 014557, Frame 0182, or for which a copy thereof is attached.

2. From: Weniwen Technologies, Inc. f/k/a Weniwen.com, Inc. To: Malaysia Venture Capital Management Berhad

The document was recorded in the United States Patent and Trademark Office at Reel 014996, Frame 0504, or for which a copy thereof is attached.

3. From: Malaysia Venture Capital Management Berhad

To: NuSuara Technologies SDN BHD

The document was recorded in the United States Patent and Trademark Office at Reel 014998, Frame 0318, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

**[NOTE:** A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.8]

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the assignee.

November 8, 2004

Date

(617) 832-1134

Telephone Number

Joseph H. Born

Typed or printed name

Signature

Attorney for the Applicants

Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 01/12/2001  
010020725 - 3108871

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
WENIWEN.COM, INC.**

**RECEIVED**  
NOV 15 2004  
OFFICE OF PETITIONS

Weniwen.com, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation")

**DOES HEREBY CERTIFY:**

**FIRST:** The name of the Corporation is Weniwen.com, Inc.

**SECOND:** The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware is October 19, 1999, under the name of Weniwen.com, Inc.

**THIRD:** That the Board of Directors of the Corporation adopted resolutions setting forth proposed amendments to the Certificate of Incorporation, declaring said amendments to be advisable and in the best interests of the Corporation:

"RESOLVED, that Article I of the Certificate of Incorporation of the Corporation be amended to read in its entirety as follows:

The name of this corporation is Weniwen Technologies, Inc."

**FOURTH:** That thereafter said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law.

IN WITNESS WHEREOF, this Corporation has caused this Certificate of Amendment to be signed by the Secretary, this 10th day of January, 2001.

WENIWEN.COM, INC.

/s/ Pascale Fung

Pascale Fung, Secretary



AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
WENIWEN.COM, INC.

(Pursuant to Sections 228, 242 and 245 of the  
General Corporation Law of the State of Delaware)

RECEIVED

NOV 15 2004

OFFICE OF PETITIONS

Weniwen.com, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Weniwen.com, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on October 19, 1999 under the name Weniwen.com, Inc.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is Weniwen.com, Inc.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 15 East North Street in the City of Dover, County of Kent. The name of the corporation's registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number

of shares that this corporation is authorized to issue is Eighteen Million (18,000,000) shares. Fourteen Million (14,000,000) shares shall be Common Stock and Four Million (4,000,000) shares shall be Preferred Stock, each with a par value of \$0.0001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Restated Certificate of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of Two Million (2,000,000) shares (the "Series A Preferred Stock"), and the Series B Preferred Stock, which series shall consist of Two Million (2,000,000) shares (the "Series B Preferred Stock"), are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights that have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or this corporation's Certificate of Incorporation ("Protective Provisions"), but notwithstanding any other rights of the Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than the Series A Preferred Stock or Series B Preferred Stock), prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.



1. Dividend Provisions. Subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the rate of (i) in the case of Series A Preferred Stock, \$0.0784 per share per annum (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and (ii) in the case of Series B Preferred Stock, \$0.20 per share per annum (as adjusted for any stock splits, stock dividends, recapitalizations or the like), or, if greater (as determined on a per annum basis and on an as converted basis for each such series of Preferred Stock), an amount equal to that paid on any other outstanding shares of this corporation, payable when, as, and if declared by the Board of Directors. Such dividends shall not be cumulative. The holders of the outstanding Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the Preferred Stock then outstanding.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, (i) the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof, (A) in the case of the Series A Preferred Stock, an amount per share equal to the sum of (i) \$0.98 (as adjusted for any stock splits, stock dividends, recapitalizations or the like) for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price") and (ii) an amount equal to declared but unpaid dividends on such share, and (B) in the case of the Series B Preferred Stock, an amount per share equal to the sum of (i) \$2.50 (as adjusted for any stock splits, stock dividends, recapitalizations or the like) for each outstanding share of Series B Preferred Stock (the "Original Series B Issue Price") and (ii) an amount equal to declared but unpaid dividends on such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock so that each holder receives the same percentage of the applicable preferential amount in proportion to the amount of such stock owned by each such holder on an as-converted basis.

(b) Upon completion of the distribution required by subsection (a) of this Section 2 and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, all of the remaining assets of this corporation available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(c)

(i) For purposes of this Section 2, a liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include (unless the holders of at least a majority of the Preferred Stock then outstanding shall determine otherwise, voting as a single class and not separate series), (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (B) a sale of all or substantially all of the assets of this corporation.

(ii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of this corporation.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors of this corporation.

(iii) In the event the requirements of this subsection 2(c) are not complied with, this corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock or Series B Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(c)(iv) hereof.



certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock or Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering Series A Preferred Stock or Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of such Series A Preferred Stock or Series B Preferred Stock shall not be deemed to have converted such Series A Preferred Stock or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series A Preferred Stock and Series B Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after the date upon which any shares of Series B Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock.

(B) No adjustment of the Conversion Price for the Series A Preferred Stock or Series B Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the

number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

(B) Shares of Common Stock issued or issuable to employees, consultants, officers or directors of the Corporation pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation;

(C) Shares of capital stock, or options or warrants to purchase shares of capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions approved by the Board of Directors of the Corporation; and

(D) Shares of capital stock or warrants or options to purchase shares of capital stock issued or issuable in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation.

(iii) In the event this corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the

outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock and Series B Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock and Series B Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A Preferred Stock or Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A Preferred Stock or Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock or Series B Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock or Series B Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock or Series B Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.



(g) No Impairment. This corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock or Series B Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock or Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock or Series B Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock or Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series A Preferred Stock or Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock or Series B Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Series A Preferred Stock or Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred



Stock and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock or Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

#### 5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A Preferred Stock or Series B Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock or Series B Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock or Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as at least a majority of the shares of Series A Preferred Stock and Series B Preferred Stock originally issued remain outstanding, the holders of such shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to elect one (1) director of this corporation at each annual election of directors (voting together as a single class and not as separate series, and on an as-converted basis). The holders of outstanding Common Stock shall be entitled to elect three (3) directors of this corporation at each annual election of directors. The holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this corporation.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall

have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions. Subject to the rights of series of Preferred Stock that may from time to time come into existence, so long as any shares of Series A Preferred Stock or Series B Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis):

(a) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of;

(b) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock or Series B Preferred Stock so as to affect adversely the shares;

(c) increase (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock or Series B Preferred Stock;

(d) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security having a preference over, or being on a parity with, the Series A Preferred Stock or Series B Preferred Stock with respect to dividends, liquidation, redemption or voting;

(e) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares at cost or at cost upon the occurrence of certain events, such as the termination of employment;

(f) pay dividends on Common Stock.

7. Status of Redeemed or Converted Stock. In the event any shares of Series A Preferred Stock or Series B Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation. The Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Division (B) of Article IV hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

#### ARTICLE V

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

#### ARTICLE VI

The number of directors of this corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

#### ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

#### ARTICLE IX

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to

this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article IX, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

#### ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

#### ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

\* \* \*

**THIRD:** The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

**FOURTH:** That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by the President and the Assistant Secretary of this corporation on this 20<sup>th</sup> day of March, 2000.

/s/ R. Lawrence Sullivan III

R. Lawrence Sullivan III, President